

March 6, 2006

Gerry Lanosga
Investigative Producer
WTHR
1313 North Meridian Street
Indianapolis, IN 46206

Re: Formal Complaint 06-FC-32; Alleged Violation of the Access to Public Records Act by the Indiana Bureau of Motor Vehicles

Dear Mr. Lanosga:

This is in response to your formal complaint alleging that the Indiana Bureau of Motor Vehicles (“BMV”) violated the Access to Public Records Act (“APRA”) by denying your request for the commercial driver’s license database. I find that the BMV has not violated the Access to Public Records Act.

BACKGROUND

You submitted a complaint through your counsel, Mr. Michael Wilkins. You have sought from the BMV an electronic copy of the Indiana commercial driver’s license database. The BMV denied your request on January 6, 2006, stating that some of the information contained in the database was protected by the Driver’s Privacy Protection Act (“DPPA”), Indiana Code 9-14-3.5. WTHR modified its request by letter dated January 17, 2006. In its modified request, WTHR asked for drivers’ names, zip code, last four digits of the driver’s social security number, and the following information about the person’s driving record: 1) license and registration status, 2) accident history, and 3) violation history. By letter dated January 24, 2006, the BMV denied the modified request for records, citing the same privacy statute and Indiana Code 5-14-3-4(a)(1), for records declared confidential by state statute.

In WTHR’s complaint, it claims that the information in the commercial driver’s license database is not personal information, because the DPPA protects only certain personal information, but specifically excludes the very information WTHR is seeking, even when linked

to the personal information. Second, WTHR contends that the modified request should have allayed the BMV's concerns for privacy of individual records, because the modified request was limited to drivers' names, zip codes, the last four digits of individuals' social security numbers, and license and registration status, accident history, and violation history. Third, WTHR contends that even if the information in the database is personal information, WTHR meets two of the limited purposes for which the BMV may disclose personal information. Moreover, WTHR has agreed to not publish or redisclose the personal information.

The BMV responded in writing to the complaint. I have sent a copy of the BMV's response to Mr. Wilkins. The BMV contends that the information that WTHR seeks from the database, while partially disclosable, is confidential with respect to any of the personal information declared confidential by statute at IC 9-14-3.5. The information declared confidential by the DPPA includes the person's name and social security number. In addition, WTHR has not met the criteria for disclosing personal information for any of the limited purposes set out in IC 9-14-3.5-10.

I spoke by telephone with the BMV and Mr. Wilkins. Mr. Wilkins indicated that WTHR believes that subscribers to the BMV's AccessIndiana service can access this same information without qualification. Mr. Certo, General Counsel to the BMV, denies that assertion. He stated that subscribers to the web-based commercial driver's license database must qualify in the same manner as WTHR or anyone else who seeks records, by meeting one of the criteria in the DPPA's section 10. Mr. Certo also stated that WTHR has taken the position that it is entitled to the database, and has not proposed a solution that would meet WTHR's needs yet protect drivers' privacy. When I asked Mr. Wilkins whether WTHR would be satisfied to receive discrete driving records stripped of all identifying information, to which WTHR could assign a unique identifier in order to conduct its research, Mr. Wilkins indicated that this suggestion would not meet WTHR's needs. Rather, Mr. Wilkins indicated that WTHR needed the driver's name and last four digits of the social security number, to allow WTHR in the future to match an individual known to have been involved in a driving incident with that person's record in the database. The BMV believes this is the very use that is proscribed by state and federal law.

ANALYSIS

Any person may inspect and copy the public records of any public agency during the agency's regular business hours, except as provided in section 4 of the APRA. Ind. Code 5-14-3-3(a). A public agency that maintains or contracts for the maintenance of public records in an electronic data storage system shall make reasonable efforts to provide to a person making a request a copy of all disclosable data contained in the records on paper, disk, tape, drum, or any other method of electronic retrieval if the medium requested is compatible with the agency's data storage system. IC 5-14-3-3(d).

Records declared confidential by state statute may not be disclosed by a public agency, unless access to the records is specifically required by a state or federal statute or is ordered by a court under the rules of discovery. IC 5-14-3-4(a)(1). If a public record contains disclosable and nondisclosable information, the public agency shall, upon receipt of a request under this chapter, separate the material that may be disclosed and make it available for inspection and copying. IC

5-14-3-6(a). A public agency may charge a person who makes a request for disclosable information the agency's direct cost of reprogramming a computer system if: 1) the disclosable information is stored on a computer tape, computer disc, or a similar or analogous record system, and 2) the public agency is required to reprogram the computer system to separate the disclosable information from nondisclosable information. IC 5-14-3-6(c).

The Driver's Privacy Protection Act prohibits the disclosure and use of personal information contained in motor vehicle records, except as authorized by an affected individual or by law. IC 9-14-3.5-1. Except as provided in section 8, 10 and 11 of Chapter 3.5, an officer or employee of the BMV may not knowingly disclose personal information about a person obtained by the BMV in connection with a motor vehicle record. IC 9-14-3.5-7. A "motor vehicle record" includes a record that pertains to a driver's license. IC 9-14-3.5-4(1). "Personal information" means information that identifies a person, including an individual's 1) photograph or computerized image; 2) Social Security number; 3) driver's license or identification document number; 4) name; 5) address (but not the 5 digit zip code); 6) telephone number; or 7) medical or disability information. IC 9-14-3.5-5. The term does not include information about vehicular accidents, driving or equipment related violations, and operator's license or registration status. IC 9-14-3.5-5.

There is no dispute between the parties that WTHR could receive disaggregated information about vehicular accidents, driving or equipment related violations, and operator's license or registration status. However, WTHR contends that none of the personal information in the seven categories is personal information when paired with information about that individual's vehicular accidents, driving or equipment related violations, and operator's license or registration status, because the latter information is specifically excluded from the definition of "personal information." I do not agree that such a reading is evident from the plain language of the statute. The DPPA specifically prohibits disclosure of personal information "about a person obtained by the BMV *in connection with a motor vehicle record.*" IC 9-14-3.5-7. The DPPA would not prohibit the BMV from disclosing a motor vehicle record stripped of any identifying information, and containing information about vehicular accidents, driving related violations, and license or registration status alone. The BMV's Mr. Certo maintains that WTHR's reading of the statute is incorrect, and the BMV in practice does not disclose personal information unless the requester satisfies the BMV that the requester is qualified to receive the information under IC 9-14-3.5-10.

In my opinion, WTHR was not entitled to the entire commercial driver's license database. Also, because an individual's name is explicitly "personal information," under IC 9-14-3.5-5(4), WTHR's modified request was correctly denied by the BMV. Because the last four digits of the social security number when paired with a person's name is identifying information, WTHR cannot prevail on its complaint that the BMV may not deny WTHR's modified request.

The BMV may disclose personal information to a person if the person requesting the information provides proof of identity and represents that the use of the personal information will be strictly limited to at least one (1) of fourteen purposes. IC 9-14-3.5-10. WTHR asserts that two of the purposes fit WTHR's intended purpose. WTHR maintains that the information sought will be used in connection with matters concerning motor vehicle or driver safety and theft,

pursuant to IC 9-14-3.5-10(2). Also, WTHR claims that the information is for use in research activities, and for use in producing statistical reports, under IC 9-14-3.5-10(5). WTHR has assured the BMV that it will not publish or redisclose the personal information; also, the information will not be used to contact individuals who are the subject of the personal information.

The BMV has determined that WTHR does not meet the criteria. Specifically, the BMV states that neither purpose (2) nor (5) are applicable in the circumstances described by WTHR. I am not privy to the particular purposes for which WTHR seeks the information. Under IC 9-14-3.5-10, the BMV has discretion to determine whether an individual meets the criteria for which personal information may be disclosed under section 10. Under the APRA, records are required to be disclosed unless they are subject to an exemption under section 4. However, the legislature has granted the BMV authority to determine when otherwise confidential records or information may be disclosed pursuant to the enumerated purposes.

Under the APRA, the standard for reviewing such exercises of discretion is whether the public agency was “arbitrary” or “capricious” in its denial. IC 5-14-3-9(g). WTHR has not alleged that the BMV was arbitrary or capricious in its exercise of discretion, just that WTHR meets the exemptions in the DPPA. I cannot find on the record before me that the BMV has exercised its discretion in an arbitrary or capricious manner in denying WTHR personal information in the commercial driver’s license database.

If WTHR can bring forth information that satisfies one or more of the purposes contained in IC 9-14-3.5-10, or modifies its request by asking the BMV to redact all identifying, personal information from the motor vehicle records, the BMV would be required to make reasonable efforts to supply the information from its database, separating the disclosable information from the nondisclosable. If the BMV is required to reprogram the computer system to separate the material, the BMV may charge WTHR the agency’s direct cost. *See* IC 5-14-3-6(c).

CONCLUSION

For the foregoing reasons, it is my opinion that the Indiana Bureau of Motor Vehicles has not violated the Access to Public Records Act by denying WTHR personal information contained in the commercial driver’s license database.

Sincerely,

Karen Davis
Public Access Counselor

cc: David Certo